

# DCP 266 Working Group Meeting 25

12 August 2019 at 10:00am

Skype Meeting / Teleconference

Attendee	Company
<b>Working Group Members</b>	
Kara Burke [KB]	Northern Powergrid
Chris Barker [CB] (part meeting)	ENWL
George Moran [GM]	British Gas
Sebastian Eyre [SE]	ESP Electricity
<b>Code Administrator</b>	
John Lawton [JL] (Chair)	ElectraLink
Dylan Townsend [DT] (Technical Secretariat)	ElectraLink

Apology	Company
Chris Ong	UKPN
David McCrone	Ofgem
Rebecca Cailles	BU-UK
Dave Wornell	WPD

## 1. Administration

- 1.1 The Secretariat noted the welcome and apologies for this meeting.
- 1.2 The Working Group reviewed the “Competition Law Guidance”. All Working Group members agreed to be bound by the Competition Law Guidance for the duration of the meeting.
- 1.3 The Working Group reviewed the minutes from the previous meeting and agreed that the minutes were an accurate reflection of the discussions held.
- 1.4 The Working Group noted the items on the actions list from the last meeting. Updates on all actions are provided in Appendix A.

## 2. Review DCUSA Legal Advisors response to Working Group request for legal opinion.

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- 2.1 The Chair highlighted that amongst the areas covered off by the legal advice received from the DCUSA legal advisors, there was one key item which needed to be discussed by the Working Group. It was noted that paragraphs 1.6 and 1.7 of the document outlined that the conditions in which a margin squeeze could occur were present. However, they also noted that from the information provided by the Working Group in their request and in the absence of the appropriate test having been carried out, they consider there to be a risk that the CP, if implemented, could result in an abusive margin squeeze. The Chair explained that a 'As Efficient Competitor' (AEC) test would be needed in order to confirm whether or not the CP would result in an abusive margin squeeze and asked for members thoughts on if and/or how one could be carried out.
- 2.2 One Working Group member noted that within their consultation response they highlighted what they believe to be a prima facie case, meaning that upon initial examination, sufficient corroborating evidence appears to exist to support a case of margin squeeze as a result of DCP 266. For completeness, the consultation response in question stated:

*Furthermore, we are concerned that the proposed solution distorts competition in the distribution of electricity, particularly at higher voltage levels.*

*In cases where the PCDM cost is higher than the CDCM tariff the higher voltage tariffs need to be capped. This applies to 26.9% of tariffs under the proposed change and includes tariffs applied to voltage levels as low as HV plus level.*

*Previously only a small number of tariffs were capped at 100% and this capping applied only at 132kV or above, and affected only two DNO areas. Hence, under the current methodology the potential impact of tariff capping is limited but under the proposed change it is much greater.*

*The effect of capping at voltage levels below the highest level is that no additional margin can be earned by a competitor entering the market at voltage levels above that point.*

*For example, a 100% discount cap applies to the HV plus:LV Network Non-Domestic Non-CT tariff in the LPN network area. No extra revenue can be earned by an IDNO connecting to the DNO network at higher voltage levels, even at 0000.*

*It is our view that such a structure of tariffs would be a form of margin squeeze because the notional cost of the upstream business is certainly greater than zero but the margin available to a competitor business entering the upstream market would be zero.*

*We are of the opinion that as the existence of the margin squeeze would make market penetration more difficult for competitors this could constitute anticompetitive behaviour under the relevant law.*

- 2.3 Another member suggested that there are two scenarios to consider, firstly, are there cases of one or two examples across all DNOs to LDNOs and would these likely form a case and if so, would they be problematic. To which one member suggested that a breach of competition law can exist without there being an actual competitor.
- 2.4 The Proposer noted that although the legal advice sets out the potential for DCP 266 to introduce a margin squeeze scenario, that it does not provide confirmation that one does exist and as such believes it to be prudent to do an AEC test. The Proposer continued and questioned whether it was for the Working Group to carry out an AEC test but that it might be for each DNO to carry out when considering how to vote on the CP or for Ofgem when making their final decision.
- 2.5 The Working Group discussed that almost any change that impacts the CDCM, and thus DUoS charges, may potentially have competition law implications between DNOs and IDNOs due to the linkage between the CDCM and the PCDM. Therefore, there was a suggestion that DNOs should potentially be undertaking an AEC test or similar when assessing such changes or upon setting their DUoS charges each year.
- 2.6 CB explained that he believes a case of margin squeeze exists as a result of the solution developed for DCP 266 and therefore, CB stated he could not continue to develop DCP 266 and confirmed that with immediate effect, he was withdrawing from the Working Group. Following this, CB exited the meeting.
- 2.7 The Chair sought confirmation as to whether any other members were of the same view and if they too wished to withdraw from the Working Group at this time, to which it was noted that whilst one had concerns, they, nor any other members present were intending on withdrawing at this time.
- 2.8 The Chair suggested that the Working Group review an email issued to the Working Group by the Secretariat which contained an initial view provided by Ofgem with respect to the legal advice received. It was noted that this view was provided via email in lieu of the fact that the Ofgem representative was unable to attend this Working Group meeting, which for completeness is set out below:

*Our view, which appears consistent with that of Gowling WLG, is that the assessment of any concerns about potential margin squeeze in relation to any activities, including those which are the subject of this modification, is a fact-sensitive assessment. On the basis of the information and analysis provided to us to date we are unclear how the risk of a margin squeeze is said to arise in relation to the particular circumstances which are the subject of DCP266. It is not said in the Advice how or which aspects of the CP would be expected to operate to create a potential situation of margin squeeze. An assessment of this type, while not involving the detailed assessment of how the AEC test might apply to particular companies, would nonetheless appear to us to be helpful in assessing the CP.*

*Given the above, and in order to ensure it is properly informed in its decision making, the Panel may wish to consider asking Gowling WLG to further refine its advice in this manner.*

2.9 The Working Group considered the points made during the previous discussions alongside the view provided by Ofgem and that at least one Party believes there to be a case of margin squeeze as a result of DCP 266. After giving due consideration to the abovementioned that Working Group agreed the following next steps should be taken:

- The Secretariat is to seek clarity from Ofgem around the type of advice and/or analysis that they have suggested they would find helpful when assessing the CP.
- Following receipt of any such clarification, the Secretariat is to raise this as an item during the next DCUSA Panel meeting, and seek guidance from the Panel as to any further engagement with the DCUSA legal advisors.
- The Proposer agreed to speak with the Ofgem representative so as to confirm the he has not misunderstood the legal advice received from the DCUSA legal advisors.

**ACTION: 25/01 – ElectraLink to seek clarity from Ofgem around the type of advice and/or analysis that they have suggested they would find helpful when assessing the CP.**

**ACTION: 25/02 – ElectraLink to raise the legal advice received along with Ofgem’s view as an item during the next DCUSA Panel meeting, and seek guidance from the Panel as to any further engagement with the DCUSA legal advisors**

**ACTION: 25/03 –GM to speak with the Ofgem representative so as to confirm the he has not misunderstood the legal advice received from the DCUSA legal advisors.**

### 3. Review comments received from DCUSA Legal Advisors on draft legal text

3.1 The Working Group reviewed the legal text prepared by the DCUSA legal advisors and agreed that they were comfortable with the legal text. The Secretariat noted that there were two comments left against paragraph 46A of the text that required a response from the Working Group which related to the capitalisation of tariff names. In reviewing the comments, it was noted that the tariff names will need to be updated now that DCP 268 has been approved by Ofgem and as such, the Secretariat took an action to update the tariff names in line with the changes made by DCP 268 and issue back to the legal advisors to prepare the final version. The updated legal text acts as Attachment 1 to the minutes.

**ACTION: 25/04 – ElectraLink to update the tariff names in paragraph 46A of the legal text document in line with the changes made by DCP 268 and issue back to the legal advisors to prepare the final version.**

### 4. Review responses to request for Working Group members to populate DCUSA Objectives template

4.1 The Working Group agreed that they will await the outcome of the actions related to the legal advice with respect to DCP 266 and competition law, prior to covering this item off as members responses may be dependent on the output of the next steps.

## 5. Review draft Change Report

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- 5.1 The Working Group agreed that they will await the outcome of the actions related to the legal advice with respect to DCP 266 and competition law, prior to covering this item off as members responses may be dependent on the output of the next steps.

## 6. Next steps and Work Plan

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- 6.1 The Working Group discussed the next steps and reviewed the Work Plan and agreed that the next steps are to complete actions 25/01 to 25/04 and then to agree the next meeting date via a doodle poll once the outcome of the actions are known

## 7. Any Other Business

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- 7.1 There were no items of any other business and the Chair closed the meeting.

## 8. List of Attachments

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- Attachment 1 – DCP 266 Revised Legal Text - Updated
- Attachment 2 – DCP 266 Work Plan - Updated

## Appendix A – Actions

### New and Open Actions (*Updates set out in blue*)

Ref.	Action	Owner	Update
24/02	ElectraLink to create a template containing the objectives and an extra column which can be circulated to the group so that members can add their views related to the DCUSA Objectives and then send to the Secretariat for collation prior to the next meeting	ElectraLink / Working Group members	Ongoing: 12 August 2019 – ElectraLink created objectives template and circulated to the group. Only one response received to date.
25/01	Seek clarity from Ofgem around the type of advice and/or analysis that they have suggested they would find helpful when assessing the CP.	ElectraLink	
25/02	Raise the legal advice received along with Ofgem's view as an item during the next DCUSA Panel meeting, and seek guidance from the Panel as to any further engagement with the DCUSA legal advisors	ElectraLink	
25/03	Speak with the Ofgem representative so as to confirm the he has not misunderstood the legal advice received from the DCUSA legal advisors.	George Moran	
25/04	Update the tariff names in paragraph 46A of the legal text document in line with the changes made by DCP 268 and issue back to the legal advisors to prepare the final version.	ElectraLink	

### Closed Actions (*Updates set out in blue*)

Ref.	Action	Owner	Update
24/01	ElectraLink to complete Objectives matrix which sets out comments made by respondents with respect to the DCUSA Objectives so that the relevant quotes/remarks can be added during the next meeting.	ElectraLink	Completed: 12 August 2019 – Objectives matrix circulated with the minutes of meeting 24
24/03	ElectraLink to undertake and agreed amendments to the draft Change Report document not carried out during the meeting and to circulate the document with the minutes.	ElectraLink	Completed: 12 August 2019 – updated Change Report circulated with the minutes of meeting 24